



Independent mental
capacity advocacy

POhWER IMCA advocates provide a free, confidential and independent service to support people who lack capacity to make certain decisions.

POhWER IMCA advocacy

There is a **legal duty** for an IMCA to be instructed where:

- there is a decision to be made regarding either serious medical treatment (SMT) or change of accommodation

AND

- the person has been deemed not to have time and issue specific capacity to make that decision

AND

- the person has no close family or friends who are appropriate or practical to consult

Change of Accommodation

- Over 28 days in hospital
- *or*
- Over 8 wks in other accommodation
- Not respite care
- Must be arranged by the NHS or LA
- Exemptions around Mental Health Act
- Section 117 aftercare clients ARE entitled to IMCA

Serious Medical Treatment

Serious Medical Treatment is defined as treatment which involves:

- giving new treatment or
- stopping treatment that has already started or
- withholding treatment that could be offered in circumstances where:
 - if a single treatment is proposed there is a fine balance between the likely benefits and the burdens to the patient and the risks involved
 - a decision between a choice of treatments is finely balanced, or
 - what is proposed is likely to have serious consequences for the patient.

POhWER IMCA advocacy

Local Authorities also have the duty to consider IMCA referrals for:

- **Safeguarding Vulnerable Adults Procedures**
- **Care Reviews**

Local Authorities will provide criteria specific to their area regarding IMCA referrals for these issues.

Care Reviews

Accommodation reviews *only*

- *Where* Accommodation is or will be longer than 12 weeks
- Significant changes to care plan
- *And* - No friends or family to consult
- *And* – client lacks capacity

Consideration should be given to instructing an IMCA for the first accommodation review following a placement. It is good practice to instruct for subsequent accommodation reviews until person has fully settled and care arrangements are clear.

Safeguarding Adults

1. Abuse must have taken place or be suspected

IMCA cannot be involved if there are no issues around suspected or proven abuse.

2. Protective measures proposed or undertaken

If there are no protective measures then the client would not be eligible for IMCA. Measures should be around a life changing decision.

3. Lack capacity for proposed protective measures

The client must be assessed as lacking capacity to consent or decide for themselves around the proposed measures.

4. Clear benefit to the client

Code of Practice states there must a clear benefit to client to have an IMCA involved. Purely auditing decisions may not be a clear benefit for client.

5. For victims or alleged perpetrators

Both victim or perpetrator of abuse have the same rights under the Mental Capacity Act and you may instruct an IMCA to represent either or both.

6. Regardless of family/friends involvement

Safeguarding Adults cases are the only times when an IMCA can become involved regardless of whether there are appropriate, willing and able family or friends. However you must still be confident that having an independent person will be of clear benefit to the client.

7. Intractable Conflict of Views about what is considered to be in the best interests of the client.

8. Client strongly indicates their views are not being taken into consideration by the decision maker.

9. Local protocols apply until PAN London Policy Implemented

If you are making a referral to IMCA for safeguarding case then you should always alert your local safeguarding lead.

Non Instructed Advocacy

IMCA is non-instructed advocacy.

Non-instructed Advocacy is a specific type of advocacy aimed at working with people who may not be in a position to understand the implications of some decisions being made about them and who may not be able to communicate their wishes or preferences about those decisions.

An IMCA advocate can work with a client taking into account their human rights, past views and wishes and other relevant information.

IMCA Role

- ✓ Check who is Decision Maker
- ✓ Support and represent the person
- ✓ Meet with the person in private
- ✓ Ascertain the persons wishes and feelings, as far as possible
- ✓ Examine and take copies of relevant health and social care records
- ✓ Ascertain whether alternative courses of action have been considered
- ✓ Obtain a further medical opinion
- ✓ Challenge the decision maker
- ✓ Submit a complaint of behalf of the individual

IMCA Role

- ✗ An IMCA is not involved when
- ✗ The Court of Protection has appointed a deputy, who continues to act on the persons behalf
- ✗ The person who lacks capacity has appointed an attorney
- ✗ The person has capacity
- ✗ The client's accommodation is regulated by the Mental Health Act
- ✗ The treatment is regulated by part 4 of the Mental Health Act
- ✗ The treatment or move is urgent

IMCA Role

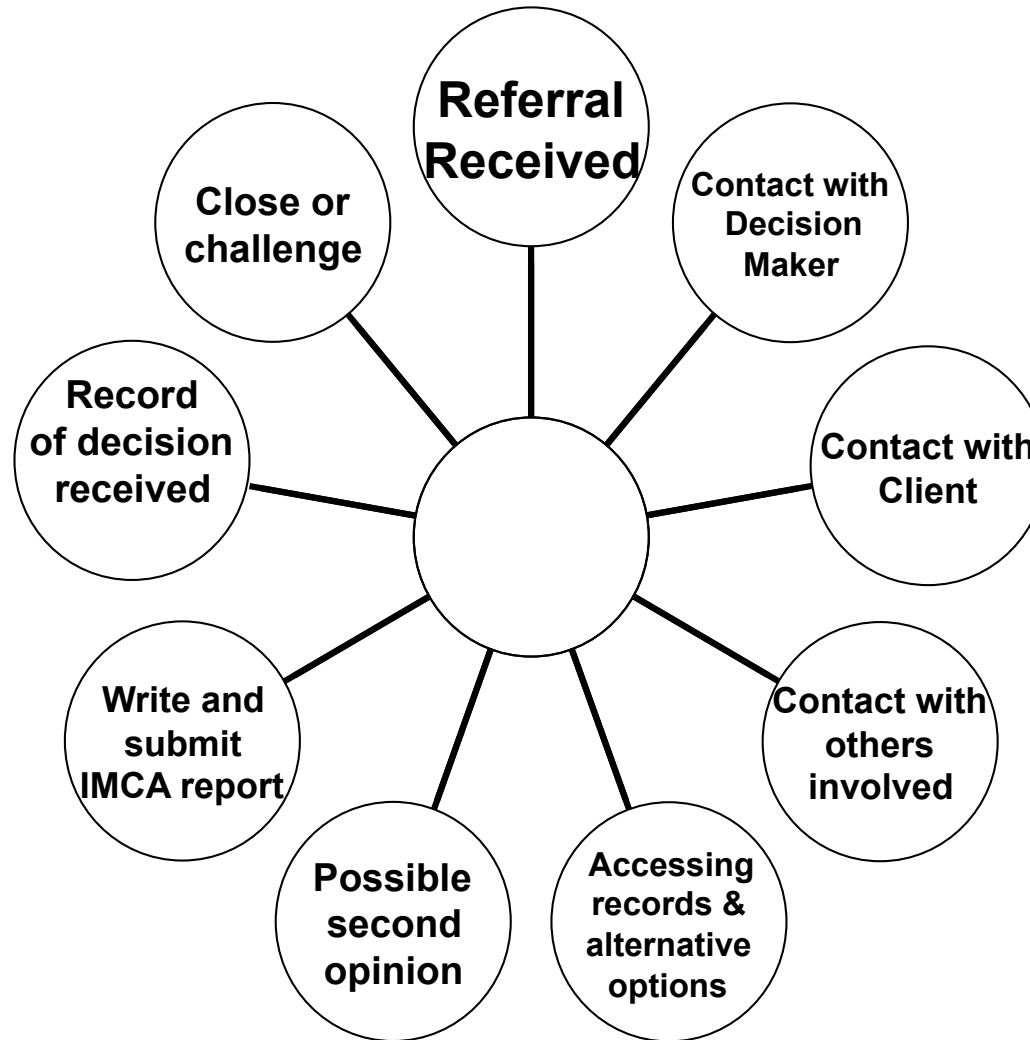
The IMCA does not:

x Assess the client's capacity

x Make the best interest decision

x Mediate between family and professionals

IMCA process



Who is the Decision Maker?

For Serious Medical Treatment:

- *NHS body* carrying out the treatment or procedure

For a Change of Accommodation:

- Hospital (over 28 days) - *NHS Body*
- Long Term Accommodation (over 8 weeks) - *NHS body or LA*

Safeguarding Adults – NHS or LA

Accommodation Review – NHS or LA

Deprivation of Liberty Safeguards – Supervisory Body

Role of the Decision Maker

Prior to instructing the IMCA service the decision maker must:

- Deem the client to lack capacity following appropriate assessment
- Deem the client to have no one appropriate to consult and to inform people who are not appropriate or practical to consult why this is the case
- To include the client in decision making process

Role of the Decision Maker

To adhere to the Principles of the MCA as detailed below;

- A person must be assumed to have capacity unless it is established that they lack capacity
- A person is not to be treated as unable to make a decision unless all practicable steps to help him to do so take been taken without success
- A person is not to be treated as unable to make a decision merely because he makes an unwise decision
- An act done or decision made under this act for or on behalf of a person who lacks capacity must be done or made in his best interests
- Before the act is done or the decision is made, regard must be had to whether the purpose for which it is needed can be as effectively achieved in a way that is less restrictive of the persons rights and freedom of action.

Role of the Decision Maker

.....and the Best Interests checklist

- Do not make assumptions about a person
- Consider all relevant circumstances
- Encourage and enable participation in the decision
- Take account of past and present wishes/feelings
- Consider the views of other “interested” people
- A person may regain capacity in due course
- Avoid discrimination
- Assess whether the person might regain capacity
- Do not assumptions about a person’s quality of life regarding life sustaining treatment
- Avoid restricting the persons rights
- Take all this into account

Role of the Decision Maker and finally.....

- Take the IMCA report into account as part of the decision making process
- Inform the IMCA of the decision made, the reasons behind it, and how the report was used
- **This is a legal responsibility arising from the Mental Capacity Act 2005**

Deprivation of Liberty Safeguards (DOL's)

To supplement the main Mental Capacity Act Code of practice 2005

Came into force 1st April 2009

Relevant Person's Paid Representative Service

For further information contact your supervisory body

POhWER London IMCA delivery areas

WEST TEAM

BRENT

EALING

HAMMERSMITH & FULHAM

HARROW

HILLINGDON

HOUNSLOW

KENSINGTON & CHELSEA

LAMBETH

WESTMINSTER

OTHER AREAS:

BEXLEY

BROMLEY

GREENWICH

HACKNEY

LEWISHAM

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